

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SHELBY KCS BUSH,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

CASE NO. 20-5056 RJB-TLF

ORDER ADOPTING REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge Theresa L. Fricke (Dkt. 11) and Petitioner's pleading entitled "Reply to Order Denying Motion for Copies of Submissions without prejudice" (Dkt. 13) which the Court should construe as an appeal of a magistrate judge's opinion under Fed. R. Civ. P. 72. The Court has considered the Report and Recommendation, the Petitioner's objections, the appeal, and the remaining file.

Report and Recommendation. The Report and Recommendation recommends dismissal, without prejudice, of this habeas corpus petition for failure to exhaust state court

1 remedies and denial of various motions. Dkt. 11. The Report and Recommendation also
2 recommends denial of a certificate of appealability. *Id.*

3 The Report and Recommendation (Dkt. 11) should be adopted. The Plaintiff's objections
4 do not provide grounds to decline to adopt the Report and Recommendation. Dkt. 12. He
5 repeats his prior arguments that he has "vicariously exhausted" his claims and asserts that there
6 is no time bar to raising a constitutional claim. *Id.* These objections are meritless and are
7 addressed in the Report and Recommendation.

8 **Standard on Appeal of Magistrate Judge's Order.** Fed. R. Civ. P. 72 provides in
9 relevant part as follows:

10 **(a) Nondispositive Matters.** When a pretrial matter not dispositive of a party's claim or
11 defense is referred to a magistrate judge to hear and decide, the magistrate judge must
12 promptly conduct the required proceedings and, when appropriate, issue a written order
13 stating the decision. A party may serve and file objections to the order within 14 days
after being served with a copy. A party may not assign as error a defect in the order not
timely objected to. The district judge in the case must consider timely objections and
modify or set aside any part of the order that is clearly erroneous or is contrary to law.

14 **Appeal of Order Denying Motion for Copies.** The Magistrate Judge's Order denying
15 the Petitioner's motion for copies (Dkt. 10) should be affirmed. The Magistrate Judge properly
16 found that the Petitioner failed to point to sufficient grounds to have the motion granted. Further,
17 the case was filed electronically. Accordingly, Petitioner is given copies of all the court orders
18 and has his own pleadings. The order (Dkt. 10) should be affirmed.

19 **Further Pleadings.** The Petitioner is notified that other than a notice of appeal, further
20 pleadings will be filed in the case, but no action will be taken on them.

21 **ORDER**

22 Therefore, it is hereby **ORDERED** that:

- 23 • The Report and Recommendation (Dkt. 11) **IS ADOPTED**;

- The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing *pro se* at said party's last known address.

Robert Bryan

ROBERT J. BRYAN
United States District Judge